

II. REMARKS/ARGUMENTS

These Remarks are in response to the Final Office Action mailed July 14, 2005. No fee is due for the addition of any new claims.

Claims 1-23 were pending in the Application prior to the outstanding Office Action. The Office Action rejected claims 1-23. At several points in the Examiner's previous response(s), the Applicant finds that the response(s) either do not clearly (or accurately) identify the text being cited, do not fully explain the grounds of the rejection or the premise upon which the rejection is based (as detailed below). "In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application". MPEP 707.07(f). Therefore, the Examiner is requested to fully explain, where requested, the ground for the rejection or otherwise to reconsider the ground for the rejection. The present reply amends Claim 1 and responds to the rejections, leaving for the Examiner's present consideration claims 1-23. Reconsideration of the claims and issuance of a Notice of Allowance is respectfully requested.

1. Amendment.

The amendment of Claim 1 to include transition points for aligning the audio and video is supported in the specification at least at [0010]. The amendment of Claim 1 to include audio framework is supported in the specification at least at [0032]. The amendment of Claim 1 to include truncating the video signal is supported in the specification at least at [0051] and [0068].

Rejections Under 35 U.S.C. §102 and 35 U.S.C. §103

The Examiner rejected claims 1-7, 18-20 and 22-24 under 35 USC §102(b) as being anticipated by U.S. Patent No. 6,067,126 (hereafter, "*Alexander*") or in the alternate under 35 U.S.C. 103(a) as obvious over *Alexander* in view of Hu, et al. (U.S. 2002/0191107; hereafter, "*Hu*").

2. 35 U.S.C. 102(b)

The Examiner's position is that *Alexander* "discloses all the structures set forth in the claims" (Office Action, March 4, 2005). The Examiner "maintains that *Alexander* can be interpreted to include the limitation of 'editing an aligned video signal'" (Office Action, July 14, 2005). The

Examiner states that “video segments may be selected and/or truncated after evaluation for suitability to the audio files to match the audio segments in length by modifying the boundaries of the video segments (column 5, lines 1-10). However, the Applicant finds no support for the Examiner’s statement, either at column 5, lines 1-10 or anywhere else in the text of *Alexander*. In *Alexander*, the word ‘truncated’ does not appear. The word ‘selected’ appears sparingly in the specification (3 times; at column 8, line 65, at column 11, line 30 and at column 11, line 63) and not in the context of editing or modifying the video. “Where an error in citation of a reference is brought to the attention of the Office by applicant, a letter correcting the error together with a correct copy of the reference is sent to the applicant”. MPEP 707.05(g). The Examiner is requested to clarify the origin of the quoted text or otherwise reconsider this ground of rejection.

Further, in regard to this ground of rejection the Applicant believes the issue relates to the customary meaning of a claim term. Claim terms are presumed to have their ordinary customary meanings attributed to them by those of ordinary skill in the art. MPEP 2111.01 §II. The Applicant argues that ‘editing video’ has a customary meaning in the art as ‘the process of manipulating video images’. Definition from http://www.webopedia.com/TERM/V/video_editing.html. As such *Alexander* does not disclose ‘editing and truncating the aligned video signal’ and therefore does not anticipate amended Claim 1.

In addition, *Alexander* does not disclose “aligning in time the video signal with the audio signal, wherein the video signal is aligned with the audio signal based on the audio signal framework”. As such *Alexander* does not disclose every element of amended Claim 1. The Examiner is respectfully requested to reconsider this ground of rejection.

3. Claims 1-7, 18-20 and 22-23 rejected under 35 U.S.C. 103(a)

The Examiner held that “[I]n the event that *Alexander* is interpreted to not disclose any edits to an aligned video signal and to only disclose[s] augmenting a video by adding an audio track then the claimed limitations would be obvious in view of *Alexander* and *Hu*.” (Office Action, July 14, 2005). Further, the Examiner interpreted *Alexander* as determining the length of the video and then analyzing the video. The Examiner then relied upon *Hu* to “... truncate so that the resultant audio frame does not exceed the length of the encoded video frame”.

The Applicant believes the Examiner has interpreted *Hu* out of context when the Examiner cites to 17 words from paragraph [0029]. *Hu* discloses a method of synchronizing differences in the processing of the audio and video data in separate, parallel bit streams in order to facilitate precise timing control (see paragraph [0009]). *Hu* does not teach or suggest “editing and truncating the aligned video signal”. “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention”. MPEP 2141.02. The text quoted by the Examiner is preceded by the following text:

“... the encoding parameters of an audio DSP chip are preset according to characteristics of an audio packet. A buffer temporarily stores the audio data until a video synchronization signal is received. Since the associated video frame is already slaved to the video synchronization clock, the audio data is effectively processed in sequence with the video data. A value representing the difference between the end of the encoded audio frame and a second video synchronization signal is communicated to the host. Those samples are ultimately truncated so that the resultant audio frame does not exceed the length of the encoded video frame”. *Hu* [0029].

Thus, *Hu* does not teach “editing and truncating the aligned video signal” but rather truncation of the audio frame to suit the video image end (which supplies the second synchronization signal). The Applicant respectfully suggests that the correct standard here is not whether truncating the video frame would be obvious given that *Hu* teaches truncating the audio frame, in other words not “... whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious”. MPEP 2141.02. Part of the novelty of the Applicant's invention is the concept of editing the ‘video image’ based on the baseline audio signal as a framework to generate a music video. Before the Applicant disclosed editing the ‘video image’ both *Alexander* and *Hu* considered only editing the audio portion.

Alexander and *Hu* actually teach away from the claimed invention. “A *prima facie* case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention”. MPEP 2144.05. The single reference to ‘truncating’ in *Hu* at paragraph [0029] is the only use of this word in the entire monolog. Further, it is the length of the video frame that dictates the second synchronization signal in *Hu*. Thus *Hu* does not manipulate the video images but teaches truncating the audio frame so as to effect synchronization. Thus, neither *Alexander* nor *Hu* teach or suggest truncating the ‘video image’. Since truncation has *per se* been identified by the Examiner as material, with respect to this application, the Applicant respectfully asserts that this rebuts the *prima facie* case.

Further, neither *Alexander* nor *Hu* teach or suggest “aligning in time the video signal with the audio signal, wherein the video signal is aligned with the audio signal based on the audio signal framework”. As such, amended Claim 1 was not obvious at the time the invention was made. The Examiner is respectfully requested to reconsider this ground of rejection. Claims 2-7, 18-20 and 22-23 all directly or indirectly depend from independent claim 1, and are therefore believed patentable for at least the same reasons as the independent claim 1 and because of the additional limitations of these claims.

4. Motivation to Combine

There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine reference teachings. MPEP § 2143.01. Here the primary references contain no express teaching such that one skilled in the art would have reason to combine *Alexander* and *Hu*.

The Examiner is requested to supply a reasoned statement why a person with skill in the art would be motivated to combine these references.

5. Claims 8-17 and 21 rejected under 35 U.S.C. 103(a)

Claims 8-17 and 21 are rejected as being unpatentable over *Alexander* in view of either “Automatic Audio Segmentation Using a Measure of Audio Novelty” by Foote (hereafter, “Foote”) or “Scene Boundary Detection via Video Self-Similarity Analysis” by Cooper et al. (hereafter, “Cooper”).

It is not clear whether the Examiner is using *Alexander* as the Examiner argued in section 2, (i.e., sufficient alone for the 102(b) rejection) or if the Examiner is conceding that *Alexander* does not disclose editing video (as the Examiner argued in section 3). The Examiner is requested to clarify the basis for using *Alexander* in this rejection.

The Applicant points out that neither *Foote* nor *Cooper* teach or disclose “aligning in time the video signal with the audio signal, wherein the video signal is aligned with the audio signal based on the audio signal framework” or “editing and truncating the aligned video signal”. As such, amended Claim 1 was not obvious at the time the invention was made.

Claims 8-17 and 21 all directly or indirectly depend from independent claim 1, and are therefore believed patentable for at least the same reasons as independent claim 1 and because of the additional limitations of these claims.

6. Motivation to Combine

The Examiner is requested to supply a reasoned statement why a person with skill in the art would be motivated to combine these references.

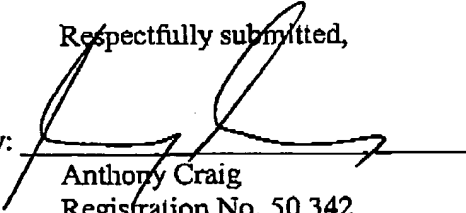
III. CONCLUSION

The references cited by the Office Action but not relied upon have been reviewed, but are not believed to render the claims unpatentable, either singly or in combination.

In light of the above, it is respectfully submitted that amended claims 1-23 should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of the patent.

No fee is believed due in connection with this paper. However, the Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Dated: 10/12/05

Respectfully submitted,

By: _____
Anthony Craig
Registration No. 50,342

FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800
Facsimile: (415) 362-2928
e-mail: ACraig@FDML.COM
Customer No.: 23910